UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,510	04/30/2001	James A. Bisher JR.	SA-018615 US PRI (A-6684)	2086

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EXAMINER
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ART UNIT	PAPER NUMBER
2424	

MAIL DATE	DELIVERY MODE
05/21/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/845,510	BISHER ET AL.
	Examiner	Art Unit	
	ANNAN Q. SHANG	2424	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>06 April 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Annan Q Shang/
Primary Examiner, Art Unit 2424

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the rejection of the last office action mailed 02/09/09, Applicant discusses the prior arts of record and the claimed invention and further argues that the prior arts of record do not meet the claims limitations (see page 15+ of Applicant's Remarks).

   In response, Examiner disagrees. Examiner notes Applicant's arguments. Applicant arguments are directed to specific units or servers of the primary prior arts of record, Dyer, and not the entire disclosure. Furthermore various claims limitations uses the language "...adapted to...", which does not recite a positive claim limitations. As to Applicant's arguments, Dyer discloses a content delivery system that employs three modes of delivering VOD to subscribers; where the three modes includes: two kinds of multicast applications models: a broadcast-like multicast that sends data (VOD and other content) to a very large number of destinations and a narrowcast (multicast) that sends data to a fairly small group of subscribers and further discloses pointcast (unicast) that sends data to a subscriber. The server monitors subscribers request and controls the outputs of the multi-modulator to stream requested data accordingly to a subscriber (pointcast), small group of subscribers (narrowcast) and a large group of subscribers (multicast), using a modulator or combining subsets of modulators as needed (figs.1, 2, 6, col.4, lines 12-26 and line 31-59, col.6, line 37-col.7, line 29, line 48+, col.8, lines 27-67, col.9, lines 26-65, col.11, line 43-53 and col.16, lines 32-63). Remote Video Session Manager 'RSM' 106 or 616, "a multi-modulator" receives at its input port transport stream having a plurality of packets including a plurality of PID streams (figs.1, 2, 6, col.4, line 31-59); Information Server 102/RSM-106 'IS/RSM' 102/106) determines from a table whether a given packet of the plurality of packets is a multicast packet or a unicast packet, and assigns modulator(s) from a multi-modulator to the packets and multicasts packet via a plurality of modulators and unicasts packet is designated for transmission from only one modulator of the plurality of modulators (col.4, lines 12-26 and line 31-59, col.6, line 37-col.7, line 29, line 48+ and col.8, lines 27-67). In order to make a determination of which of the modes of delivery to send down the receives packets the IS/RSM 102/106, appends a data unit header to each packet including the modulator identifier identifying one or more of the plurality of modulators from which the packet is to be transmitted, processes each packet prior to transmission from one or more of the plurality of modulators; copying the determined multicast packets into modulators from which the multicast packet is to be transmitted (col.4, lines 12-26 and line 31-59, col.6, line 37-col.7, line 29, line 48+ and col.8, lines 27-67); IS/RSM 102/106 further provides each packet and copied packet to one of a multicast or unicast buffer in accordance with the data unit header; stripping the data unit header from each packet and copied packet from one the plurality of modulators (col.4, lines 12-26 and line 31-59, col.6, line 37-col.7, line 29, line 48+ and col.8, lines 27-67). Dyer teaches, receiving user requests, recalling programs from memory (disk drive array, an off-line storage system such as an optical disk library, etc.), packetizing and pre-packetizing data and streams data, multicast, narrowcast or pointcast, based a determination of user requests (figs.1, 2, 6 and col.9, lines 26-65, col.11, line 43-53 and col.16, lines 32-63). Dyer is silent as to copying the determined multicast packets depending upon how many of the plurality of modulators from which the multicast packet is to be transmitted. However, in the same field of endeavor, Du, discloses that when a multicast connection is required of a cell (packet), the packet is copied in accordance with the number of connections defined by the multicast connection and written into a respective buffer memory (col. 11, lines 19-22). Furthermore, the claimed step of "providing each modulator identified by the modulator identifier with a copy of the given packet, where each copy has a common output PID value associated therewith" is met inherently by the fact that the packet is a copy, therefore indicating that it would have the same PID and the fact that the Dyer reference teaches providing the packets to the modulators based on the routing table, which determines the modulator assigned to each individual modems. Hence, Applicant's arguments are not persuasive, the finality of the last office action is proper, meets all the claims limitations and hereby maintained.
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